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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 100 of 1999

with

Civil Application No.185 of 1999

in

SPECIAL CIVIL APPLICATION No 10870 of 1998

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR CK THAKKER and
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?-Yes. th
judgements?-Yes. the judgements?-Yes.
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the judgements?-Yes. the judgements?
Yes.

2. To be referred to the Reporter or not?-No.

3. Whether Their Lordships wish to see the fair copy
of the judgement?-No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No. @ o
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5. Whether it is to be circulated to the Civil Judge?-No.

 MEHSANA DISTRICT CO. OP. MILK PRODUCERS UNION LIMITED

Versus

DISTRICT REGISTRAR

Appearance:

MR MEHUL SHARAD SHAH for Appellant
 Ms.Harsha Devani,
 Assistant GOVERNMENT PLEADER for Respondent Nos. 1 to 3.
 Mr.Premal Joshi, Advocate, for respondent No.4.

CORAM : ACTING CHIEF JUSTICE MR CK THAKKER and

MR.JUSTICE M.C.PATEL

Date of decision: 16/02/99

ORAL JUDGEMENT: (Per C.K. Thakkar, Acting C.J.)

Admitted. Ms. Harsha Devani, AGP, appears for respondents 1 to 3 and waives service of notice of admission and Mr.Premal Joshi appears on behalf of respondent No.4 and waives service of notice of admission. In the facts and circumstances, the matter is taken up for final hearing.

This appeal is filed against summary dismissal of Special Civil Application No.10870 of 1998 on December 22, 1998.

The appellant was the original petitioner. The case of the appellant was that it was a Cooperative Milk Producers' Union, registered in 1960. Respondent No.4, Shedafa Milk Producers' Cooperative Mandali used to collect milk from its members and supply the same to the appellant at a prescribed rate. The appellant used to supervise the affairs of the Mandali and quality of milk. During supervision, it was found by the Officers of the appellant-Dairy that the respondent No.4 had opened some

bogus accounts in the name of some farmers and by mixing water in the milk, Mandli used to supply more milk than actually collected by the Mandli. Not only that, the Mandli joined hands with Fat Tester and by showing higher fat than what was actually got, received more payment from the Dairy. During the inspection, certain irregularities were also found. Hence, an order was passed at Annexure 'C' to the petition on September 11/12, 1990, stating therein that because of the irregularities committed by the respondent No.4-Mandli, there was excess payment to the tune of Rs.9937.85 Ps. to respondent No.4 and it was required to be deducted from the amount paid to respondent No.4-Mandli.

The said order was challenged by respondent No.4-Mandli by filing an application before the District Registrar, Cooperative Societies, Mehsana, respondent No.1 herein. The case of the appellant was that though the appellant was directly interested and affected party, no notice was issued, no opportunity of hearing was afforded and the order passed by the appellant was set aside by the respondent No.1. An appeal which was filed by the appellant against the said order also came to be dismissed without hearing the appellant. Revision Application also met with the same fate. When a petition was filed, the learned single Judge was of the opinion that the amount involved was very meagre and it was not a fit case to interfere with the order passed by the authorities and accordingly, the petition was summarily dismissed. It is this order which is challenged in the present appeal.

Mr.Shah, learned counsel for the appellant, contended that the question is not of quantum of amount, but the way in which everything was done. He also drew our attention to a statement made by the President of respondent No.4, at Annexure 'A' to the petition, on August 9, 1990, in which the irregularities and illegalities were admitted by the President of respondent NO.4. He also submitted that there are about 950 Mandlies and if the petition is dismissed only on the ground that the amount is a small one, there will be no discipline and it may result into mismanagement at all levels.

Mr.Premal Joshi, learned counsel for the respondent No.4, fairly stated that in the facts and circumstances, respondent No.4 does not challenge the legality and validity of the Office Order Annexure 'C' dated September 11 / 12, 1990 and that the respondent No.4 gives up challenge to the said order. In the light

of the said statement, Mr.Shah also fairly stated that the appellant will not hold the President of respondent No.4 liable in his personal capacity and if the challenge to Annexure `C' is given up by respondent No.4-Mandli, then no drastic action will be taken against the respondent No.4 only on that count.

In the facts and circumstances, in our opinion, ends of justice would be met if the following direction is issued :-

The orders passed by the District Registrar, respondent No.1, as confirmed by the Appellate Authority, Additional Registrar, respondent No.2, also affirmed by the Deputy Secretary, Agriculture and Cooperation, respondent No.3 and by the learned single Judge in Special Civil Application are quashed and set aside. Challenge to the validity of Annexure `C' is given up by respondent No.4. The President will not be held personally liable and no drastic action will be taken by the appellant against respondent No.4-Society on the act in question. Appeal is allowed to the above extent. In the facts and circumstances, no order as to costs.

In view of the order passed in the main matter, in C.A.No.185 of 1999, notice is discharged and ad interim relief is vacated.

(apj)